Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

A.O. No. 167 of 2003

New India Insurance Company Ltd.,
Through its Divisional Manager,
Divisional Office – 5/222, Canal Road,
Tikonia, Haldwani, District-Nainital.

……. Opp.party/Appellant.

Versus.

(1) Mohd. Shamshad S/o late Sri Abdul Gani,
(2) Smt. Rahmat wife of Mohd.Shamshad,
Residents of Village Japtiganj, Police Station, Najibabad, District-Bijnor, U.P.

…….. Claimants/respondents.

(3) Sri Sunil Pal S/o Sri Madan Singh Pal,
R/o Tiwara, District-Rudraprayag.

…….Opp.part /Respondents

Sri Lalit Belwal, learned counsel for the appellant,
Sri R.K. Shah, learned counsel for the respondents 1 & 2.

Dated: 25th Aug.,2004

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma, J.

The present appeal has been filed against the award of compensation dated 28.04.2003 made by the Motor Accident Claims Tribunal/District Judge, Tehri Garhwal in Motor Accident Claim Case No. 27 of 2000.

2- Brief facts giving rise to this appeal are that in the night of 24.3.2000 at about 2:00 a.m. near Juyalgarh Pulia, P.S.-Kirtinagar, District-Tehri Garhwal, the vehicle truck No. UP 08-1211 fell into ditch in which Mohd.Abrar who was travelling to supply the vegetables received injuries and died on the spot. It has been alleged that the accident took place due to rash and negligent driving of the

driver of the truck in question. The monthly income of the deceased was Rs. 2100/- and he was only 18 years old at the time of accident. The father and mother of the deceased filed the claim petition before the Tribunal for compensation amounting to Rs. 16,58,400/-which was allowed by the Tribunal for Rs. 2,50,000/- alongwith interest at the rate of 6% per annum.

3- The Opp. Parties contested the claim petition. In his written statement, the owner has admitted the accident and alleged that the deceased Mohd.Abrar was a temporary employee in his transport getting Rs. 1500/- per month and the accident in question took place due to failure of brake of the vehicle. The Insurance Company did not deny the insurance of the truck in question with it. It was further alleged that this was the collusive petition between the claimants and the owner and the deceased was not authorised to travel in the vehicle. On the pleadings of the parties, the Tribunal framed necessary issues and after scrutinising the evidence adduced by the parties, allowed the petition accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant pressed the appeal on the ground that the vehicle in question was insured for the period with effect from 16.10.1998 to 15.10.1999 with the appellant-Insurance Company and on 24.6.1999 the Insurance Company only registered the transfer of ownership of the vehicle in the name of Sri Sunil Pal and accordingly charged only Rs. 50/- as transfer fee, which paper clearly speaks that other terms and conditions of the insurance policy remains uncharged and also indicated the date of expiry of the insurance policy as 15.10.1999. It is further contended that the appellant-Insurance Company only charged transfer fee and the

validity of the insurance policy was to expire on 15.10.1999, as such the insurance policy cannot be said to be extended just because the date of expiry of insurance was by mistake mentioned by the development officer in the cover note as 15.10.2000.

5- The claim petition was not contested on the aforesaid points before the Tribunal. The learned counsel for the appellant moved an application under Order 41 Rule 27 of the Civil Procedure Code supported by an affidavit in the appeal praying that the Insurance Company may be permitted to procedure additional documentary evidence i.e. the insurance policy of the vehicle including the endorsement of change of ownership of the vehicle, which could not be filed on behalf of the Insurance Company by mistake before the Tribunal.

6- The learned Tribunal has discussed each and every point in its judgment. The learned counsel for the appellant has not pressed the appeal on any other grounds except the aforesaid grounds but merely non-filing the insurance policy of the vehicle in question including the endorsement of change of ownership of the vehicle does not absolve the Insurance Company form its liability to pay compensation to the dependents of the deceased which are the ultimate sufferers and need quick remedy of compensation and the insurer, if it so desires, can take recourse to recover the compensation amount from the insured.

17. Keeping in view the facts and circumstances of the case, the application under Order 41 Rule 27 of the C.P.C. is allowed and the appellant is permitted to file additional documentary evidence as prayed after satisfying the award before the learned Tribunal. The Tribunal shall decide the point of liability after producing the

documentary evidence by the appellant and if the liability to pay the compensation goes to the insured, the insurer-appellant then initiate proceeding before the executing court for recovery of the amount of compensation.

8- The appeal is disposed of accordingly. Amount if deposited in the appeal shall be remitted to the concerned Tribunal within three months.

(B.S.Verma, J.) **(P.C.Verma, J.)**

P.Singh